



TO: The Honorable Members of the Board of Regents

FROM: Sarah S. Benson *Sarah S. Benson*

SUBJECT: Proposed Amendment to Section 69.2 of the Regulations of the Commissioner of Education Relating to Licensing Examination and Testing Accommodations in the Profession of Architecture

DATE: July 6, 2023

AUTHORIZATION(S): *Tom M. G. Bellotti*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment to section 69.2 of the Regulations of the Commissioner of Education relating to the licensing examinations and testing accommodations in the profession of architecture?

Reason for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the July 2023 meeting of the Board of Regents. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are attached.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the May 2023 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 31, 2023, for a 60-day public comment period.

Because the May emergency action will expire on August 13, 2023, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the September 2023 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on August 30, 2023. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

Background Information

The proposed amendment to section 69.2 of the Commissioner's regulations conforms New York State's (NYS) architect licensure requirements with national standards set by the National Council of Architectural Registration Boards (NCARB)¹ by amending the examination content requirements and retention of credit provisions for the Architect Registration Examination (ARE). The proposed amendment also permits English as a second language (ESL) testing accommodations.

Examination Content:

Since its inception in 1983, the ARE's content has evolved and now consists of six parts: (1) Practice Management; (2) Project Management; (3) Programming and Analysis; (4) Project Planning and Design; (5) Project Development and Documentation; and (6) Construction and Evaluation. The proposed amendment to section 69.2(a) of the Commissioner's regulations conforms the examination content names to the national standard by replacing them with the ARE's subject areas as currently tested.

Implementation of Score Validity Policy:

The Board of Regents last changed the retention of credit provision in 2010 to include a five-year rolling clock to align with NCARB's then-existing requirement. The former rolling clock gave a licensure candidate five years to complete all divisions of the ARE. In February 2023, NCARB announced that it had decided to retire the five-year rolling clock, effective April 30, 2023. The former rolling clock policy was replaced with a new score validity policy, which bases the validity of passed ARE divisions on versions of the examination rather than a set time frame.²

Before adopting the new score validation policy, NCARB conducted extensive research with several focus groups and survey respondents raised several concerns with the five-year rolling clock. NCARB data collected from examination candidates' records confirmed that its rolling clock policy was disproportionately more likely to impact the validity of examination scores for women and people of color. Each of these groups of licensure candidates already experience lower examination success rates.

¹ NCARB, in collaboration with licensing boards, facilitates the licensure and credentialing of architects in the United States and its territories, to protect the health, safety, and welfare of the public.

² The ARE 4.0 version of the licensing examination was first offered in July 2008 and was last offered in June 2018. The ARE 5.0 version of the licensing examination was first offered in November 2016, offering candidates more than a year and a half of overlap between the two versions of the examination. It is anticipated that NCARB will similarly offer an overlap of time between the sunset of ARE 5.0 with the offering of ARE 6.0, expected sometime in 2027 or 2028.

Due to the nature of the new score validity policy, which is not time-bound but version-bound, extensions to the retention of credit period will no longer be offered. The passed divisions will expire after two versions of the examination. The score validity policy will ensure that examination scores remain relevant and that candidates demonstrate competency in the content found in the current or most recent version of the examination.

The proposed amendment to section 69.2(b)(2) of the Commissioner's regulations deletes the five-year retention clock and incorporates the new score validity policy, that allows passed examination divisions to be valid throughout the delivery of the examination version under which it was taken, as well as the next examination version. For example, a candidate testing in the current ARE 5.0 will retain credit for divisions passed under ARE 4.0, a licensure candidate testing in ARE 5.0 will retain credit for that version and the ARE 6.0 version, and so on.

The proposed amendment to section 69.2(b)(3) of the Commissioner's regulations eliminates potential extensions of the time period for a candidate to pass one or more of the divisions of the ARE because such extensions will no longer be offered under the new score validation policy.

Testing Accommodations:

During NCARB's research into factors impacting exam performance, an evaluation was performed to determine the need to address testing inequity for architecture candidates who are ESL readers. Using examination performance data comparing non-ESL candidates to ESL candidates, independent psychometricians determined that a significant difference in performance existed. Specifically, ESL candidates ran out of time and left examination questions unanswered, which significantly impacted their ability to demonstrate their full knowledge on the ARE.

Psychometric analysis and research into best practices informed NCARB's decision to permit two accommodations for ESL testing accommodations: (1) providing ESL candidates with 20% additional testing time on the examination; and (2) allowing the use of a bilingual dictionary while testing.

Out of NCARB's 55 jurisdictions, NYS is the only jurisdiction whose regulations do not expressly allow acceptance of scores earned with NCARB's new ESL test accommodation for the ARE. Therefore, the Department proposes to amend section 69.2(a) of the Commissioner's regulations to conform NYS's testing accommodations to national standards by aligning them with NCARB's testing accommodations, which include ESL accommodations, for the ARE.

Related Regents Items

May 2023: [Proposed Amendment to Section 69.2 of the Regulations of the Commissioner of Education Relating to Licensing Examination and Testing Accommodations in the Profession of Architecture](https://www.regents.nysed.gov/sites/regents/files/523ppca2.pdf)

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Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 69.2 of the Regulations of the Commissioner of Education be amended, as submitted, effective August 14, 2023, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Regulations of the Commissioner of Education to the national licensing and testing accommodations standards in the profession of architecture and to ensure the emergency action taken at the May 2023 Regents meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the July 2023 Regents meeting, the emergency rule will become effective August 14, 2023. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the September 2023 Regents meeting, after publication of the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the September 2023 meeting, the proposed rule will become effective as a permanent rule on September 27, 2023.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6506, 6507 and 7304 of the Education Law

1. Subdivision (a) of section 69.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Content. The examination may include, but need not be limited to, architectural [history, theory, construction, professional practice, building design and site planning] practice management, project management, programming and analysis, project planning and design, project development and documentation, and construction and evaluation. The department may accept satisfactory scores, reported on a pass/fail basis, on all or part of the written examination produced by the National Council of Architectural Registration Boards. Notwithstanding section 59.3 of this Title, such scores may include testing accommodations offered by the National Council of Architectural Registration Boards which are acceptable to the department to include all accommodations, including English as a second language accommodations.

2. Subdivision (b) of section 69.2 of the Regulations of the Education is amended to read to read as follows:

(b) Retention of credit.

(1) The grade retention provisions of section 59.5(f) of this Title shall not be applicable to the examination.

(2) [Applicants who have passed a division of the examination prior to January 1, 2006 shall retain credit for that examination division up to and including June 30, 2014. Applicants who have passed a division of the examination on or after January 1, 2006

shall retain credit for that division for a five-year period that begins on the date of the administration of that examination division.

(3) Extensions.

(i) The department may allow an extension of the time period provided in paragraph (2) of this subdivision for an applicant to pass one or more divisions of the examination passed on or after January 1, 2006, where completion of all divisions of the examination by the applicant in accordance with the time limitations set forth in paragraph (2) of this subdivision is prevented by one or more of the following:

- (a) the birth or adoption of applicant's child;
- (b) the applicant has a serious medical condition;
- (c) the applicant is engaged in active duty with the Armed Forces; or
- (d) the applicant is faced with extreme hardship or other circumstances beyond the control of the applicant.

(ii) An applicant shall request such an extension by submitting a written request to the department with supporting documentation for the department's review.

(iii) Upon a finding by the department that the conditions for an extension have been met, the department may in its discretion provide the applicant with an appropriate extension as follows:

- (a) for the birth or adoption of applicant's child, a six month extension;
- (b) for an applicant with a serious medical condition, a period of time not to exceed two years;
- (c) for an applicant engaged in active duty with the armed forces, a time period equivalent to that of the applicant's active service in the armed forces, running from the end of the applicant's active service; or

(d) for extensions based upon an applicant's demonstration of personal hardship or other circumstances, a time period to be determined by the department.] Upon the recommendation of the State Board for Architecture, the department may accept satisfactory scores in accordance with the score validity policy established by the National Council of Architectural Registration Boards on an examination accepted pursuant to subdivision (a) of this section.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment is necessary to conform the Commissioner's regulations to align New York State's (NYS) architect licensure requirements with national standards set by the National Council of Architectural Registration Boards (NCARB). NCARB's Architect Registration Examination (ARE) is the licensure examination used by all 55 NCARB jurisdictions across the United States and its territories to determine if a licensure candidate is competent to independently practice the profession of architecture. Currently, NYS is the only NCARB jurisdiction that does not permit English as a Second Language (ESL) accommodations on the ARE. The proposed rule conforms the Commissioner's regulations to national standards by amending the examination content requirement, and retention of credit provisions, and permitting ESL testing accommodations for the ARE.

The proposed rule conforms the Commissioner's regulations to national architect licensure standards by amending:

- section 69.2(a) by renaming the examination content areas to align with the ARE's currently tested subject areas, which became effective November 1, 2016;
- section 69.2(a) by aligning it with NCARB's testing accommodations, which include ESL accommodations, for the ARE, which became effective June 28, 2022;
- section 69.2(b)(2) by deleting the five-year credit retention clock and incorporating NCARB's new score validity policy, which allows passed

examination divisions to be valid throughout the delivery of the examination version under which it was taken, as well as the next examination version, effective April 30, 2023; and

- section 69.2(b)(3) by eliminating the extension of the time period(s) for a candidate to pass one or more of the divisions of the ARE because such extensions will no longer be offered under the new score validation policy, effective April 30, 2023.

The proposed amendment was presented to the Professional Practice committee for recommendation to the Full Board for adoption as an emergency rule at the May 2023 meeting of the Board of Regents, effective May 16, 2023. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 202(1) and (5), would be the September 2023 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September 2023 meeting, would be September 27, 2023, the date a Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on August 13, 2023. Therefore, since NCARB's new less restrictive score validity and ESL testing accommodations policies are already effective, a second emergency action is necessary at the July 2023 meeting, effective August 14, 2023, for the preservation of the general welfare in order to timely implement both the new score validity policy, which will benefit NYS candidates because it is less restrictive than NYS's current credit retention policy, and the ESL testing accommodations policy, which will allow NYS ESL candidates to benefit

from such accommodations and to ensure the emergency action taken at the May 2023 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed amendment will be presented for permanent adoption at the September 2023 Regents meeting, which is the first scheduled meeting after the expiration of the 60-day public comment period mandated by SAPA for state agency rule making.